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CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY                      DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

11 MJ 3415

UNITED STATES OF AMERICA, ) Magistrate Case No. \_\_\_\_\_  
 )  
Plaintiff, ) COMPLAINT FOR VIOLATION OF:  
 )  
v. ) Title 18, U.S.C., Sec.  
 ) 1030(a)(2)(C) and (c)(2)(B) -  
KAZUO NAKAYAMA, ) Intentionally Exceeding Authorized  
 ) Access to a Protected Computer  
Defendant. )

The undersigned Complainant, being duly sworn, states:

Count 1

Beginning in or about May 2011, and continuing up to and including August 24, 2011, within the Southern District of California, defendant KAZUO NAKAYAMA intentionally exceeded authorized access to a computer and thereby obtained information from a protected computer, and the offense was committed for purposes of commercial advantage and private financial gain, and the value of the information obtained exceeded \$5,000; in violation of Title 18, United States Code, Section 1030(a)(2)(C) and (c)(2)(B) (i) and (iii).

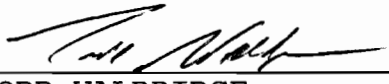
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1 This complaint is based on the attached Statement of Facts  
2 incorporated herein by reference.

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5 TODD WALBRIDGE,  
6 Special Agent, FBI

7 Sworn to me and subscribed in my presence this 14<sup>th</sup> day of September,  
8 2011.

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10 RUBEN B. BROOKS  
11 U.S. MAGISTRATE JUDGE  
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1 UNITED STATES OF AMERICA  
2 v.

3 KAZUO NAKAYAMA

4 STATEMENT OF FACTS

5 TODD WALBRIDGE, being duly sworn, states:

6 1. I am a Special Agent with the Federal Bureau of  
7 Investigation (FBI). The following is based on my own investigation,  
8 oral and written reports by other law enforcement officers,  
9 interviews, public records, database checks, searches, and other  
10 investigation. As this affidavit is for a limited purpose, I have not  
11 included every fact I know about this investigation. I set forth only  
12 facts necessary to establish foundation for the complaint. Dates and  
13 times are approximate.

14 2. Defendant Kazuo Nakayama was employed as a Principal Antenna  
15 Engineer by Novatel Wireless Inc. in San Diego, California from  
16 December 6, 2010, until and including August 31, 2011. On December  
17 6, 2010, Nakayama signed two documents: (1) "Inventions Disclosure,  
18 Confidentiality & Proprietary Rights Agreement" (the "Confidentiality  
19 Agreement"), and (2) "Review of IT Policies and Procedures" (the "IT  
20 Policies").

21 3. Under Paragraph 2.1 of the Confidentiality Agreement,  
22 Nakayama agreed that he would not "directly or indirectly, use for  
23 myself or others . . . any Confidential Information of the Company .  
24 . . except as may be authorized and required by the Company in the  
25 course of my employment with the Company."

26 4. Under Paragraph 2.2 of the Confidentiality Agreement,  
27 Nakayama agreed that "[a]ll . . . computer-stored information . . .  
28 relating in any manner to the Company's business . . . shall not be

1 removed from the Company's premises without its prior written consent,  
2 nor shall I make unauthorized copies of such information."

3       5. Paragraph 6.4.1 of the IT Policies states that, "Use of  
4 Novatel IT resources . . . and IT equipment are for business purposes.  
5 Occasional personal use is permitted as long as your direct supervisor  
6 agrees that it is not affecting work performance and the use is not  
7 in violation of any of the rules contained in this policy."

8       6. Paragraph 6.4.15 of the IT Policies states that, "Novatel  
9 IT resources shall not be used for personal gain or performing work  
10 for personal profit."

11       7. According to statements that Nakayama made to the FBI during  
12 a consensual interview, Nakayama encountered a former colleague at an  
13 industry conference in San Diego in May 2011. The former colleague  
14 worked for a Novatel competitor, Huawei, and advised Nakayama that  
15 Huawei was hiring. At or around this time, Nakayama said, he began  
16 accessing the Novatel computer network via his company-issued laptop  
17 and saving Novatel files to personal external storage devices.

18       8. According to interviews with Nakamaya's supervisor at  
19 Novatel, Bill Babbitt, and Novatel counsel, Catherine Ratcliffe, in  
20 or about early August 2011, Novatel learned that Nakayama had accepted  
21 a job with Huawei. Novatel then hired a forensic consulting company  
22 to image Nakayama's company-issued laptop. The forensic company's  
23 analysis of the computer showed that Nakayama had been downloading and  
24 saving proprietary Novatel information from Novatel's computer network  
25 since approximately May 2011 and had continued to do so until just  
26 before Novatel imaged the computer. The files that Nakayama accessed  
27 and saved to his personal external storage devices included files for  
28 a Novatel project known as "Caspian". Nakayama did not have

1 authorization to copy the Caspian files to his personal electronic  
2 storage devices. Ratcliffe has advised me that the electronic files  
3 pertaining to the Caspian project are worth approximately \$6 million.

4 9. On August 24, 2011, Nakayama submitted his resignation to  
5 Novatel. The next day, Ratcliffe met with Nakayama to conduct an exit  
6 interview. During the interview, Ratcliffe provided Nakayama with his  
7 signed copy of the Confidentiality Agreement and asked if he  
8 remembered signing it. Nakayama replied that he did and that he  
9 understood it. Ratcliffe asked Nakayama why he had downloaded  
10 information from the Novatel computer system onto four different  
11 external storage devices. Nakayama replied that he had done so for  
12 his personal knowledge and interest. Ratcliffe then asked him to sign  
13 a release form permitting Novatel to review the four external storage  
14 devices. Nakayama agreed to the request and Novatel and its forensic  
15 consultant took possession of an external hard drive, two thumb  
16 drives, and a USB drive later that day.

17 10. Novatel's forensic review of these storage devices showed  
18 that Nakayama downloaded data from Novatel's computer network up until  
19 August 24, 2011, the day that he resigned. The external hard drive  
20 alone contained approximately 670 gigabytes of data.<sup>1</sup> Due to this  
21 volume, Novatel has not yet completed its forensic review of the data.  
22 It has found, in addition to the Caspian files, a file entitled "CDMA"  
23 and files pertaining to a project known as "Fonseca" on Nakayama's  
24 external storage devices. Ratcliffe has told the FBI that the CDMA  
25 file contains approximately ten years worth of research and  
26 information and that the Fonseca files, like the Caspian files, are

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28 <sup>1</sup> For reference, 500 gigabytes is akin to approximately 25 million pages.



1 worth approximately \$6 million. Babbitt has told me that neither the  
2 volume of data nor the files that Nakayama downloaded to his personal  
3 external storage devices were consistent with Nakayama's job  
4 assignment or for work that Nakayama would have conducted on Novatel's  
5 behalf.

6 11. On August 31, 2011, Novatel terminated Nakayama's  
7 employment. Shortly thereafter, Nakayama consented to an interview  
8 with the FBI at Novatel's offices. During the interview, Nakayama  
9 stated that he began downloading data from Novatel's network in the  
10 spring and continued up until his resignation. Nakayama said that he  
11 neither sought nor had authorization to download and copy this data  
12 to his personal external storage devices. To download the data,  
13 Nakayama said that he used his company-issued laptop to access the  
14 Novatel computer network and then copied data from the network onto  
15 his personal external storage devices. Nakayama initially stated that  
16 he had downloaded the data to improve his performance at Novatel.  
17 Later, Nakayama admitted that the data was for his personal enrichment  
18 and benefit and that he wanted to use it to develop his own expertise.  
19 Nakayama eventually said, "what I did was wrong."

20 12. Novatel's computer servers, which are in San Diego, are  
21 accessible via the Internet, via virtual private networking, and by  
22 offices located in Texas, Canada, England, and China.

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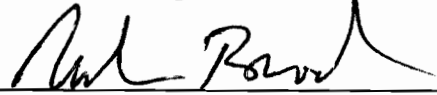
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1 SEALING REQUEST: Because this is an ongoing investigation and  
2 premature disclosure of the investigation and this affidavit could  
3 cause the subject to flee and the destruction of evidence, I request  
4 that this affidavit, all arrest warrants, the complaint, and all other  
5 associated court records be sealed until further court order.

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TODD WALBRIDGE, Special Agent  
8 Federal Bureau of Investigation

9 SUBSCRIBED and SWORN to before me on September 14, 2011.

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12 HON. RUBEN B. BROOKS  
13 UNITED STATES MAGISTRATE JUDGE  
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